

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

JARRETT DELANEY MYERS)
)
 Plaintiff,)
)
 v.) CV421-353
)
 SHERIFF JOHN T. WILCHER,)
 and MS. JACKSON)
)
 Defendant.)

ORDER

Pro se plaintiff Jarrett Delaney Myers has filed this 42 U.S.C. § 1983 action alleging that was deprived of access to legal research materials while incarcerated at Chatham County Detention Center. *See* doc. 1-1 at 5-6. He has now complied with the requirements to proceed *in forma pauperis*. *See* docs. 9 & 10. The Court must, therefore, screen his Complaint, pursuant to 28 U.S.C. § 1915A. The Court concludes that Myers has sufficiently stated a claim to warrant service upon the defendants.

I. Motion to Appoint Counsel (Doc. 10)

Myers has moved for court-appointed counsel. *See* doc. 4. He states that he is unable to afford counsel. *Id.* at 1. He contends that his

“imprisonment will greatly limit his ability to litigate,” and, in a wholly conclusory fashion, that “[t]he issues involved in this case are complex.” *Id.* Finally, he states that he lacks legal education or experience. *Id.* For the reasons explained below, Myers’ Motion is **DENIED**. Doc. 4.

Myers has no constitutional right to counsel in this civil case. *Wright v. Langford*, 562 F. App’x 769, 777 (11th Cir. 2014) (citing *Bass v. Perrin*, 170 F.3d 1312, 1320 (11th Cir. 1999)). “Although a court may, pursuant to 28 U.S.C. § 1915(e)(1), appoint counsel for an indigent plaintiff, it has broad discretion in making this decision, and should appoint counsel only in exceptional circumstances.” *Id.* (citing *Bass*, 170 F.3d at 1320). Appointment of counsel in a civil case is a “privilege that is justified only by exceptional circumstances, such as where the facts and legal issues are so novel or complex as to require the assistance of a trained practitioner.” *Fowler v. Jones*, 899 F.2d 1088, 1096 (11th Cir. 1990) (citing *Poole v. Lambert*, 819 F.2d 1025, 1028 (11th Cir. 1987), and *Wahl v. McIver*, 773 F.2d 1169, 1174 (11th Cir. 1985)). “[T]his Court has repeatedly found that prisoners do not receive special consideration [for appointed counsel] notwithstanding the challenges of litigation in a case while incarcerated.” *Holzclaw v. Milton*, 2019 WL 1474398, at * 1 (S.D.

Ga. Apr. 3, 2019) (internal quotation marks and citation omitted); *see also Bell v. Lamb*, 2021 WL 1954739, at * 3 (S.D. Ga. Mar. 30, 2021).

The Eleventh Circuit has explained that “the key” to assessing whether counsel should be appointed “is whether the *pro se* litigant needs help in presenting the essential merits of his or her position to the court. Where the facts and issues are simple, he or she usually will not need such help.” *McDaniels v. Lee*, 405 F. App’x 456, 457 (11th Cir. 2010) (quoting *Kilgo v. Ricks*, 983 F.2d 189, 193 (11th Cir. 1993)). Myers has presented “the essential merits of his position” to the Court. *Id.* There is no apparent ambiguity in his Complaint. *See generally* doc. 1-1. The facts as presented do not show any “exceptional circumstance” that warrants appointment of counsel. *Fowler*, 899 F.2d at 1096. Myers’ motion is, therefore, **DENIED**. Doc. 4.

II. Screening and Service

Because the Court applies Federal Rule of Civil Procedure 12(b)(6) standards in screening a complaint pursuant to § 1915A, *Leal v. Ga. Dep’t of Corr.*, 254 F.3d 1276, 1278-79 (11th Cir. 2001), allegations in the Complaint are taken as true and construed in the light most favorable to the plaintiff, *Bumpus v. Watts*, 448 F. App’x 3, 4 n.1 (11th Cir. 2011). The

facts of Myers' Complaint are straightforward. He alleges that the Chatham County Detention Center has a policy, instituted by Sheriff Wilcher and effectuated by Defendant Jackson, that "denies detainees access to the Law Library without the detainee showing a[n] employee of the Jail a court order confirming the detainee represents himself/herself." Doc. 1-1 at 5. He alleges that he has attempted to comply with the policy by showing documentation reflecting his litigation of various cases *pro se*. *Id.* at 5-6. Despite that documentation, he was refused access to the law library and employees insisted "they needed a[n] actual court order signed by a [j]udge . . ." *Id.* at 6. Finally, he alleges that he has "missed several deadlines to his civil rights complaints[,"] has been prevented from filing "a medical malpractice tort[,"] and has been impeded in his defense of criminal and "probation revocation" proceedings. *Id.*

The right of access to the courts encompasses "the capability of bringing contemplated challenges to sentences or conditions of confinement before the courts." *Lewis v. Casey*, 518 U.S. 343, 356 (1996). This right does not automatically translate into a right to a law library or other forms of legal assistance. *Id.* at 350 ("*Bounds* established no such right [to a law library or to legal assistance]."). In order to state an

access to courts claim, any alleged infringement of plaintiff's right of access to the courts "must have frustrated or impeded [his] efforts to pursue a nonfrivolous legal claim." *Bass v. Singletary*, 143 F.3d 1442, 1445 (11th Cir. 1998). However, there is no requirement that states enable a prisoner to "litigate effectively" once in court. *Lewis*, 518 U.S. at 354; *see also, e.g.*, *Barbour v. Haley*, 471 F.3d 1222, 1225 (11th Cir. 2006) (recognizing possible access-to-courts claims where "a court dismissed [the plaintiff's] action for failure to comply with a technical requirement unknown to the inmate due to deficiencies in the prison's assistance facilities, or that a claim could not be presented to a court because an inmate was so stymied by the law library's inadequacies that he could not prepare a complaint."). Myers' allegation that he was denied access to legal research materials and that he has "missed several deadlines," in his cases are sufficient to merit a response from defendants.

Therefore, a copy of Plaintiff's Complaint, doc. 1-1, and a copy of this Order shall be served upon Defendants John T. Wilcher and Ms. Jackson by the United States Marshal without prepayment of cost. The Court **DIRECTS** the Clerk of Court to serve a copy of this Order upon

Plaintiff. The Court also provides the following instructions to the parties that will apply to the remainder of this action.

INSTRUCTIONS TO ALL DEFENDANTS IN THIS ACTION

Because Plaintiff is proceeding *in forma pauperis*, the undersigned directs service be effected by the United States Marshal. Fed. R. Civ. P. 4(c)(3). In most cases, the marshal will first mail a copy of the complaint to a defendant by first-class mail and request the defendant waive formal service of summons. Fed. R. Civ. P. 4(d); S.D. Ga. L. Civ. R. 4.5. A defendant has a duty to avoid unnecessary costs of serving the summons, and any defendant who fails to comply with the request for waiver must bear the costs of personal service unless good cause can be shown for the failure to return the waiver. Fed. R. Civ. P. 4(d). Generally, a defendant who timely returns the waiver is not required to answer the complaint until 60 days after the date the marshal sent the request for waiver. Fed. R. Civ. P. 4(d)(3).

IT IS FURTHER ORDERED that any Defendant in this action is granted leave of court to take the deposition of Plaintiff upon oral examination. Fed. R. Civ. P. 30(a)(2). Defendants are further advised the Court's standard 140-day discovery period will commence upon the

filings of the last answer. S.D. Ga. L. Civ. R. 26.1. Defendants shall ensure all discovery, including Plaintiff's deposition and any other depositions in the case, is completed within that discovery period.

If a Defendant takes the deposition of any other person, Defendants are ordered to comply with the requirements of Federal Rule of Civil Procedure 30. As Plaintiff will not likely attend such a deposition, the Defendant taking the deposition must notify Plaintiff of the deposition and advise him that he may serve on that Defendant written questions Plaintiff wishes to propound to the witness, if any. Defendants shall present such questions to the witness in order and word-for-word during the deposition. Fed. R. Civ. P. 30(c). Plaintiff must submit the questions in a sealed envelope within 10 days of the notice of deposition.

INSTRUCTIONS TO PLAINTIFF

Plaintiff is charged with the responsibility of **immediately** informing this Court and defense counsel of any change of address during the pendency of this action. S.D. Ga. L. Civ. R. 11.1. Plaintiff's failure to

notify the Court of a change in his address **may result in dismissal of this case.**

IT IS FURTHER ORDERED that Plaintiff shall serve a copy of every pleading or other document submitted for consideration by the Court on each Defendant (or, if appearance has been entered by counsel, the Defendant's attorney). Plaintiff shall include with the original paper to be filed with the Clerk of Court a certificate stating the date on which a true and correct copy of any document was mailed to each Defendant or the Defendant's counsel. Fed. R. Civ. P. 5. "Every pleading shall contain a caption setting forth the name of the court, the title of the action, [and] the file number." Fed. R. Civ. P. 10(a).

Plaintiff has the responsibility for pursuing this case. For example, if Plaintiff wishes to obtain facts and information about the case from a Defendant, Plaintiff must initiate discovery. *See generally* Fed. R. Civ. P. 26 to Fed. R. Civ. P. 37. The discovery period in this case will expire 140 days after the filing of the last answer. S.D. Ga. L. Civ. R. 26.1. Plaintiff does not need the permission of the Court to begin discovery, and Plaintiff should begin discovery promptly and complete it within this time period. *Id.* Discovery materials should **not** be filed routinely with

the Clerk of Court; exceptions include: when the Court directs filing; when a party needs such materials in connection with a motion or response, and then only to the extent necessary; and when needed for use at trial. S.D. Ga. L. Civ. R. 26.4.

Interrogatories are a practical method of discovery for incarcerated persons. *See* Fed. R. Civ. P. 33. Interrogatories may be served only on a **party** to the litigation, and, for the purposes of the instant case, this means that interrogatories should not be directed to persons or organizations who are **not named** as a defendant. Interrogatories are not to contain more than 25 questions. Fed. R. Civ. P. 33(a). If Plaintiff wishes to propound more than 25 interrogatories to a party, Plaintiff must have permission of the Court. If Plaintiff wishes to file a motion to compel, pursuant to Federal Rule of Civil Procedure 37, he should first contact the attorney for Defendants and try to work out the problem; if Plaintiff proceeds with the motion to compel, he should also file a statement certifying that he has contacted opposing counsel in a good

faith effort to resolve any dispute about discovery. Fed. R. Civ. P. 26(c), 37(a)(2)(A); S.D. Ga. L. Civ. R. 26.5.

Plaintiff has the responsibility for maintaining his own records of the case. If Plaintiff loses papers and needs new copies, he may obtain them from the Clerk of Court at the standard cost of fifty cents (\$.50) per page. **If Plaintiff seeks copies, he should request them directly from the Clerk of Court and is advised that the Court will authorize and require the collection of fees from his prison trust fund account to pay the cost of the copies at the aforementioned rate of fifty cents (\$.50) per page.**

If Plaintiff does not press his case forward, the court may dismiss it for failure to prosecute. Fed. R. Civ. P. 41; S.D. Ga. L. Civ. R. 41.1.

It is Plaintiff's duty to cooperate in any discovery initiated by a Defendant. Upon no less than five days' notice of the scheduled deposition date, Plaintiff must appear and permit his deposition to be taken and must answer, under oath or solemn affirmation, any question

which seeks information relevant to the subject matter of the pending action.

As the case progresses, Plaintiff may receive a notice addressed to “counsel of record” directing the parties to prepare and submit a Joint Status Report and a Proposed Pretrial Order. A plaintiff proceeding without counsel may prepare and file a unilateral Status Report and is required to prepare and file his own version of the Proposed Pretrial Order. A plaintiff who is incarcerated shall not be required or entitled to attend any status or pretrial conference which may be scheduled by the Court.

**ADDITIONAL INSTRUCTIONS TO PLAINTIFF REGARDING
MOTIONS TO DISMISS AND MOTIONS FOR SUMMARY
JUDGMENT**

A Defendant may choose to ask the Court to dismiss this action by filing a motion to dismiss, a motion for summary judgment, or both. Under this Court’s Local Rules, a party opposing a motion to dismiss shall file and serve his response to the motion within 14 days of its service. Failure to respond shall indicate that there is no opposition to a motion. S.D. Ga. L. Civ. R. 7.5. Therefore, if Plaintiff fails to respond to a motion to dismiss, the Court will assume that he does not oppose the

Defendant's motion. Plaintiff's case may be dismissed for lack of prosecution if Plaintiff fails to respond to a motion to dismiss.

Plaintiff's response to a motion for summary judgment must be filed within 21 days after service of the motion. S.D. Ga. L. Civ. R. 7.5, 56.1. The failure to respond to such a motion shall indicate that there is no opposition to the motion. Furthermore, each material fact set forth in a Defendant's statement of material facts will be deemed admitted unless specifically controverted by an opposition statement. If a Defendant files a motion for summary judgment, Plaintiff will have the burden of establishing the existence of a genuine dispute as to any material fact in this case. That burden cannot be met by reliance on the conclusory allegations contained within the complaint. If a Defendant's motion for summary judgment is supported by affidavit, Plaintiff must file counter-affidavits if he wants to contest Defendant's statement of the facts. If Plaintiff fails to file opposing affidavits setting forth specific facts showing that there is a genuine dispute for trial, any factual assertions made in the Defendant's affidavits will be accepted as true and summary

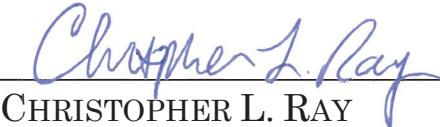
judgment may be entered against Plaintiff pursuant to Federal Rule of Civil Procedure 56.

III. Conclusion

In summary, Myers' Motion to Appoint Counsel is **DENIED**. Doc. 4. His Complaint is approved for service on Defendants Wilcher and Ms. Jackson , as explained in detail above. Finally, it is time for plaintiff to pay his filing fee. His PLRA paperwork reflects \$0 in average monthly deposits over the six-month period prior to the date of his Prison Account Statement. Doc. 9. He therefore owes no initial partial filing fee. *See* 28 U.S.C. § 1915(b)(1) (requiring an initial fee assessment “when funds exist,” under a specific 20 percent formula). Furthermore, Plaintiff's custodian (or designee) shall therefore set aside 20 percent of all future deposits to his account, then forward those funds to the Clerk each time the set aside amount reaches \$10.00, until the balance of the Court's \$350.00 filing fee has been paid in full. In the event he is transferred to another institution, his present custodian shall forward a copy of this Order and all financial information concerning payment of the filing fee and costs in this case to plaintiff's new custodian. The balance due from

plaintiff shall be collected by the custodian at his next institution in accordance with the terms of the payment directive portion of this Order.

SO ORDERED, this 1st day of July, 2022.



CHRISTOPHER L. RAY
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA